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DEC 24 2003

OFFICE OF THE DIRECTOR
TC 3800

In re Application of
Germain Fournier, et al.
Application No. 09/942,682
Filed: August 31, 2001
For: TURNING DEVICE FOR LUMBER AND
THE LIKE

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on July 28, 2003, and supplemented on December 22, 2003.

The petition is **GRANTED**.

A review of the file records reveals that an Office Action was mailed to applicant on November 26, 2002. Since a response from applicant was not received, the application was held abandoned, and a Notice to that effect was mailed on July 7, 2003.

Applicant submits that the Office Action mailed on November 26, 2002 was never received and provides copies of docket records presumably to take advantage of the procedure outlined in 1156 O.G. 53 and MPEP 711.03(c) for withdrawing an abandonment in an application having a non-received Office correspondence.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.


The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of February 26, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Office Action was not received. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Office Action was not received. A supplemental copy of the docket record where the non-received Office action would have been entered as being due on and around the date of February 26, 2003 was submitted by facsimile transmission on December 22, 2003 in response to a request from the petition's examiner. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Office Action of November 26, 2002 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.



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SNM/cps: 12/22/03